SBCivil Writ Petition No.5941/2004

Srikant Bohra
Vs.
State of Rajasthan & Ors.

Date of Order :: 15th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The petitioner, a retired government servant, has claimed for reimbursement of medical expenses incurred in treatment of his wife at Bombay Hospital, Bombay. The respondents denied the reimbursement of medical expenses on the count that the petitioner failed to get his wife treated at a hospital enlisted by Government of Rajasthan for getting reimbursement of medical expenses.

In brief, facts of the case are that the petitioner while in service visited Bombay for certain domestic affairs in the month of October, 2001 where his wife fell sick and her condition become so serious that she was admitted to Bombay Hospital and was subjected to a surgery on 23.10.2001. After undergoing such surgery she survived only for a period of about eight months and breath last on 29.6.2002. The petitioner by submitting requisite medical bills claimed for reimbursement of expenses incurred in treatment of his wife in a tune of Rs.2,61,000/-. The respondents did not reimburse the expenses incurred, hence this petition for writ is preferred.

As a matter of fact the controversy involved in this petition for writ stands decided by Division Bench of this Court in the case of Shankerlal v. the State of Rajasthan & Ors., reported in 2000(3) WLC (Raj.), 585, holding as under:-

> "27.While considering the contention of the respondent State that the petitioner ought to have availed medical treatment at AIIMS at Delhi or obtained certification required under r.7(1) from any medical officer from AIIMS by treating him to be authorised medical attendant in terms of r.6(2) who could certify necessary vouchers. It is apt to recall following observations of a Division Bench of Punjab & Haryana High Court in C.W.P. NO.13493/92 titled as Sadhu R.Pall Vs. State of Punjab, decided on 6.10.1993 quoted with approval by the Supreme Court in Surjit Singh's case (supra):
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> > "The respondents appear to have patently used excuses in refusing full reimbursement. When the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS New Delhi. We cannot loose sight of factual situation in the AIIMS New Delhi i.e. with respect to the number of patients received there for heart problems. In such an urgency on cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."

This is complete answer to above contention.

28.There are two decisions of the Rajasthan High Court referred by the learned single Judge in Khuman Singh Mehta versus State of Rajasthan and Ors. (1996 WLC (UC) 61) and Shyam Singh Vs. State of Rajasthan and Ors. (1996(2)WLC-441) wherein this Court issued a direction to reimburse the medical expenses incurred for securing medical attendance for special diseases outside Rajasthan in like circumstances for the reason that there was no facility of treatment of the disease from which the petitioner was suffering, in the State of Rajasthan are in consonance with above principles and cannot be distinguished. In fact, present case is in better footing inasmuch as the person needing medical treatment has been taken ill and needed such medical attendance while outside Rajasthan and at a place where specialised treatment for her ailment was available at an approved Institution recognised by State of Rajasthan in that behalf.

29.The ratio of these decisions fully applies to the facts of the present case wherein while the petitioner was in Delhi on leave, his wife suffered heart problem and was immediately taken to Escorts Heart and Research Centre, Delhi, which is recognised Hospital for specialised treatment by the State Govt., where his open heart surgery was made. Thus, it is clear that Escorts Heart and Research Institute is one of the recognised Hospital for specialised treatment, there is not escape from the

conclusion that the State Govt. is liable to reimburse such expenses without insisting for certification from the authorised Medical Attendant or other Competent Officer, when such a facility was not available in the State of Rajasthan. The claim could not be denied on the ground that because the petitioner instead of waiting in queue and spending time in seeking a clarification from a local hospital has decided to act with promptitude in the interest of self preservation by taking his wife immediately to an Institute approved by the State Govt.

30.Before closing we may notice one ancillary contention raised on behalf of respondent. It was stated that about diagnosis for treatment and certifying expense vouchers, no Doctor of Escorts Health Centre could be considered as Authorised Medical Attendant. The argument appears to be fallacious and founded on ignoring the distinction between function of certifying a patient to be taken to an approved Hospital or Institution outside Station for treatment and certifying the disease for which the patient has actually treated and medical attendance and treatment actually made available to such patient. So far as the treatment given at any approved institution or for that matter by any medical attendant is concerned, it follows his own diagnosis and prognosis. Actual treatment does not follow on the certificate issued under r.7(1). It depends on patient being examined at the Hospital or Institution where he is attendant for such treatment. The treatment or medical attendance made

available at such institution follows assessments and diagnosis made at or at the instance of such hospital/institution. It is only on such assessment by the treating agency that treatment follows. Therefore, medical attendance at only such institution can certify about the disease with which the treated patient suffered and treatment rendered at such institute as indoor/outdoor patient. The medical attendant of other institution or Hospital in such circumstance puts his counter signatures only for the purpose of authenticating it in accordance with Rules. However, such counter signing by the authenticated medical attendant cannot be by itself take the place of primary proof of diagnosis and treatment rendered by approved hospital or institution at which patient was attendant to. Cases are not wanting where notwithstanding certification by the prescribed authority under r.7(1), the approved institution has on their own assessment has found otherwise. Therefore, denial of reimbursement of expenses incurred on medical attendance and treatment bonafide and genuinely by the public servant for availing treatment for himself or any member of his family at recognised hospital/institution in the circumstances like the present case on such technical grounds shall be clearly arbitrary, unreasonable and unjust. The required formalities of counter signing the certificate/vouchers issued by such Institutions can always be cured by obtaining appropriate counter signatures from the competent Officer under the Rules and in the absence of doubt about genuiness of such

> certification, such authority will not be justified in refusing to countersign without satisfying his doubt."

This Court in the case of Mandal Dutt Purohit v. State of Rajasthan, SBCivil Writ Petition No.5683/2005, decided on 3.10.2006, in similar circumstances, held as under:-

> "It is not at all disputed that the petitioner has undergone an angiography and cardiac artery bypass at Goyal Hospital & Research Centre Pvt. Ltd., Jodhpur on 9.9.2004. The petitioner on facing an acute cardiac pain was admitted to the hospital concerned on 4.9.2004 and under a competent medical advice he was subjected to emergent angiography and coronary artery bypass. In such crucial circumstances the petitioner was having no option but to undergo the treatment wherever the treatment was available at earliest. It shall be highly unjust to expect from a person battling for life to proceed for a hospital recognised by the Government of Rajasthan for getting the medical expenses reimbursed. The prime consideration in such situation is to bring the life in safe zone, beyond the cost consideration. The government has provided statutory medical benefits including reimbursement of expenses incurred in treatment. The main object behind it is to extend a helping hand to its employees suffering ailment, the place of treatment is a secondary consideration. If the reimbursement is made absolutely dependent to the place of treatment then it shall not only be arbitrary

but shall also be contrary to the fundamental right for protection of life.

The law laid down by this Court in the judgments referred above is having absolute application in present controversy. The wife of the petitioner while at Bombay suffered ailment and in emergent circumstances was admitted to Bombay Hospital and was subjected to surgery on 23.10.2001. In such emergent situation it was not possible for the petitioner to be calm and calculated to take over his wife to the Hospital enlisted as recognised one by the Government. The petitioner as a matter of fact was having no option but to get his wife treated at Bombay Hospital.

In view of it this petition for writ is allowed. The respondents are directed to reimburse the medical expenses incurred by the petitioner in treatment of his wife at Bombay Hospital, Bombay, i.e. in a tune of Rs.2,61,000/- within a period of three months from today.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.